

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
FAX (605) 224-9020

June 28, 2005

Thomas A. Blake, Esq.
505 W. 9th Street
Suite 202
Sioux Falls, South Dakota 57104

John Q. Hammons, President
City Centre Hotel Corporation
300 John Q. Hammons Pkwy # 900
Springfield, Missouri 65806

Subject: ***In re David Joseph Kott***
Chapter 7; Bankr. No. 00-40679

Dear Mr. Blake and Mr. Hammons:

The matter before the Court is the Motion for Order Directing Clerk of Court to Discharge Judgment(s) Voided in Bankruptcy filed by Debtor on June 16, 2005. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and subsequent order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, Debtor's motion will be granted in part and denied in part.¹

Summary. On June 10, 1996, Holiday Inn City Centre ("Holiday Inn") obtained a judgment against David Joseph Kott ("Debtor") in state court for \$2,509.84 plus interest. On March 19, 1997, AAA Collections ("AAA") obtained a judgment against Debtor in state court for \$615.52 plus interest. On January 27, 2000, AAA obtained a second judgment against Debtor in state court for \$639.12 plus interest.

On August 11, 2000, Debtor filed for relief under chapter 7 of the bankruptcy code. Debtor included Holiday Inn and AAA's attorney on both his Schedule F and his mailing list of creditors. However, while he included AAA on his Schedule F, Debtor did not include AAA on his mailing list of creditors.

¹ The relevant facts are not in dispute. The issue presented is purely a question of law. Thus, no hearing was held.

Re: David Joseph Kott
June 28, 2005
Page 2

On August 13, 2000, the Bankruptcy Clerk served notice of commencement of the case on the creditors and other parties in interest included on Debtor's mailing list of creditors. Holiday Inn and AAA's attorney were among those who received notice of commencement of the case. AAA was not.

The notice of commencement of case clearly stated that the deadline for filing a complaint objecting to discharge or to determine the dischargeability of a particular debt was November 14, 2000. None of Debtor's creditors filed a complaint objecting to discharge or to determine the dischargeability of a particular debt. On November 15, 2000, Debtor was therefore granted a discharge under § 727 of the bankruptcy code.

On June 16, 2005, Debtor filed a Motion for Order Directing Clerk of Court to Discharge Judgment(s) Voided in Bankruptcy. Holiday Inn's and AAA's judgments were listed in Debtor's motion. On June 27, 2005, Holiday Inn filed an objection to Debtor's motion, in which it stated that it believed "it was the debtor's intent to defraud Holiday Inn City Centre, by not completing the services which the debtor was paid by Holiday Inn City Centre to provide."²

Discussion. Section 524(a)(1) of the Bankruptcy Code provides:

- (a) A discharge in a case under this title -
 - (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived[.]

² Holiday Inn's response was signed by its president. In the Eighth Circuit, a partnership or corporation may appear before a federal court only through an attorney. See 28 U.S.C. § 1654; Fed.R.Bankr.P. 9010(a); and *Ackra Direct Marketing Corp. v. Fingerhut Corp.*, 86 F.3d 852, 857 (8th Cir. 1996). However, the Court's practice has been to accept objections from such entities and advise them to retain an attorney to represent them at any necessary hearings. In keeping with that practice, the Court advised Holiday Inn by letter dated June 27, 2005 that it had accepted Holiday Inn's objection.

Re: David Joseph Kott
June 28, 2005
Page 3

Section 524(a)(1) does not require the debtor to do anything to void a judgment. The discharge automatically voids any judgment that represents a determination of the debtor's personal liability for a debt that has been discharged.

Section 15-16-20 of the South Dakota code establishes the procedure for removing such a judgment from the records of the clerk of court for the county in which it was docketed. When a debtor receives a bankruptcy discharge, she may file a motion in the bankruptcy court for an order listing each state court judgment that has been voided. Upon receipt of the bankruptcy court's order, the clerk of court for the county in which the judgment was docketed must enter it in the judgment docket. This has the effect of discharging the listed judgments from and after that date.

In this case, Holiday Inn received timely notice of Debtor's bankruptcy. It did not object to Debtor's discharge or to the dischargeability of its claim. Its claim was therefore discharged on November 15, 2000. Its judgment was voided on that same date. Debtor is therefore entitled to the relief requested in his motion with respect to Holiday Inn's judgment.

However, Debtor is not entitled to the relief requested in his motion with respect to AAA's judgment. Federal Rule of Bankruptcy Procedure 1007(a)(1) requires a debtor to include the "name and address of each creditor" on her mailing list of creditors. Nothing in Rule 1007(a)(1) suggests the debtor may include the creditor's attorney rather than the creditor.

[P]roper scheduling of a creditor requires listing the creditor at its own address or at least that of an agent designated for service of process. The Court is mindful that an appropriate address for service on a creditor may change throughout the course of a case by virtue of a notice of appearance filed pursuant to Fed.R.Bankr.P. 2002(g) or by the filing of a proof of claim with a different address, but the initial scheduling which occurs before a creditor or its attorney has made an appearance in the case should be the creditor's own address if it has one.

Carpet Services, Inc. v. Hutchison (In re Hutchison), 187 B.R. 533, 535 (Bankr. S.D. Tex. 1995) (citing cases).

[O]ne cannot serve initial process on an attorney for a party unless the attorney agrees to accept service after authorization from the party. Moreover, it doesn't necessarily follow that because an attorney has represented a client in one case, they will automatically

Re: *David Joseph Kott*
June 28, 2005
Page 4

be representing the client in subsequent cases regarding the same issues. It follows that the only safe way to ensure proper service of notices is to serve the creditor directly.

Midatlantic National Bank v. Kouterick (In re Kouterick), 161 B.R. 755, 759 (Bankr. D.N.J. 1993).³

In this case, because Debtor did not include AAA on his mailing list of creditors, AAA did not receive formal notice of Debtor's bankruptcy filing. As a result, AAA's claim may not have been discharged. See 11 U.S.C. § 523(a)(3). The only way that can be determined is through an appropriate adversary proceeding to determine dischargeability. See Fed.R.Bankr.P. 7001(6). Since no such determination has been made, it would be premature to grant Debtor the relief he has requested with respect to AAA's judgment.

Accordingly, Debtor's motion will be granted in part and denied in part. The Court will enter an appropriate order.

I hereby certify that a copy of this document was electronically transmitted, mailed, hand delivered or faxed this date to the parties on the attached service list.

JUN 28 2005

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota

INH:sh

By

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

JUN 28 2005

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

cc: case file (docket original; copies to parties in interest)

³ That is not to say that an attorney who represented a creditor in the past should not be included.

[I]t is certainly a desirable courtesy to list an attorney who is known to have represented a creditor in pre-petition matters regarding the debt in question, in addition to scheduling the creditor separately.

Kouterick, 161 B.R. at 759. However, listing the attorney is only a courtesy. Listing the creditor - at the creditor's own address - is a requirement.

Stephanie C. Bengford
Assistant U.S. Attorney
PO Box 3303
Sioux Falls, SD 57101-3303

Thomas A. Blake
#202, 505 W. 9th St.
Sioux Falls, SD 57104

Bruce J. Gering
Office of the U.S. Trustee
230 S Phillips Ave, Suite 502
Sioux Falls, SD 57104-6321

Holiday Inn City Centre
John Q. Hammons, President
300 John Q. Hammons Pkwy #900
Springfield, MO 65806

David Joseph Kott
3201 N. Highland
Sioux Falls, SD 57104

Lee Ann Pierce
Trustee
PO Box 524
Brookings, SD 57006

AAA Collections, Inc.
PO Box 881
Sioux Falls, SD 57101

Holiday Inn City Centre
100 W. 8th Street
Sioux Falls, SD 57104